

**RIGHT TO KNOW ADVISORY COMMITTEE  
PUBLIC RECORDS EXCEPTIONS SUBCOMMITTEE**

DRAFT AGENDA  
August 8, 2012  
1:00 p.m.  
Room 438, State House, Augusta

**Convene**

1. Welcome and Introductions  
Shenna Bellows, Chair
2. Existing Exceptions Remaining from 125<sup>th</sup> Legislature  
Review drafts
  - Title 22, section 8754, reporting of sentinel events
  - Title 22, sections 1696-D and 1696-F, related to the Community Right-to-Know Act (divided)Review letter
  - Title 22, section 3188, related to the Maine Managed Care Insurance Plan
  - Title 22, section 3192, related to the Community Health Access Program
3. Review of Existing Exceptions –Titles 26 through 39-A
  - A. Statutes tabled from July 16th meeting  
11, 12, 13, 14, 15, 16, 17, 37, 42, 43, 44, 45, 46, 47, 51, 52, 54, 55, 57
  - B. Additional statutes ready for review
4. Public-private partnership, DOT projects, exception review (23 MRSA §4251)
5. Scheduling future subcommittee meetings
6. Other?

**Adjourn**

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## Public Records Exceptions Subcommittee

### Existing Public Records Exceptions, Titles 26 – 39-A

Revised 8/7/2012 11:31 AM

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	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
1	26	3		Title 26, section 3, relating to information, reports and records of the Director of Labor Standards within the Department of Labor	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM</li> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• DECD</li> <li>• SPO/OPM?</li> <li>• DOL: no more than one or 2/year; NO CHANGE</li> </ul>		
2	26	43		Title 26, section 43, relating to the names of persons, firms and corporations providing information to the Department of Labor, Bureau of Labor Standards	<ul style="list-style-type: none"> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• Federal law prohibits release that would identify</li> <li>• NO CHANGE</li> </ul>		
3	26	665	1	Title 26, section 665, subsection 1, relating to records submitted to the Director of Labor Standards within the Department of Labor by an employer concerning wages	<ul style="list-style-type: none"> <li>• DOL</li> </ul>	<ul style="list-style-type: none"> <li>• Request very rare</li> <li>• NO CHANGE</li> </ul>		
4	26	685	3	Title 26, section 685, subsection 3, relating to substance abuse testing by an employer	<ul style="list-style-type: none"> <li>• ? (employer)</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
5	26	934		Title 26, section 934, relating to report of the State Board of Arbitration and Conciliation in labor dispute	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
6	26	939		Title 26, section 939, relating to information disclosed by a party to the State Board of Arbitration and Conciliation	<ul style="list-style-type: none"> <li>• State Board of Arbitration and Conciliation</li> </ul>	<ul style="list-style-type: none"> <li>• 2 requests, final decision public</li> <li>• NO CHANGE</li> </ul>		

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7 26	1082	7	Title 26, section 1082, subsection 7, relating to employers' unemployment compensation records concerning individual information	• DOL	<ul style="list-style-type: none"> <li>• Requests not uncommon</li> <li>• Subject to court order</li> <li>• Federal law prohibits release</li> <li>• NO CHANGE</li> </ul>		
8 27	121		Title 27, section 121, relating to library records concerning identity of patrons and use of books and materials	<ul style="list-style-type: none"> <li>• Maine State Library</li> <li>• Law and Legislative Reference Library</li> <li>• <i>UMS library</i></li> <li>• <i>MCCS library</i></li> <li>• <i>MMA library</i></li> <li>• <i>Public libraries?</i></li> </ul>	•		
9 27	377		Title 27, section 377, relating to the location of a site in possession of a state agency for archeological research	<ul style="list-style-type: none"> <li>• Maine Historic Preservation Commission</li> <li>• Maine State Museum</li> </ul>	<ul style="list-style-type: none"> <li>• No FOA requests</li> <li>• Access/release of info permitted for legitimate research purposes</li> <li>• NO CHANGE</li> </ul>		
10 28-A	755		Title 28-A, section 755, relating to liquor licensees' business and financial records	• DAFS: BABLO	•		

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11	29-A	152	3, subsection 3, relating to the Secretary of State's data processing information files concerning motor vehicles	• SOS	<ul style="list-style-type: none"> <li>Estimate: 12-20 times per year</li> <li>NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>		
12	29-A	253	Title 29-A, section 253, relating to motor vehicle records concerning certain nongovernmental vehicles	• SOS	<ul style="list-style-type: none"> <li>Estimate: 12 times per year</li> <li>NO CHANGE</li> </ul>		
13	29-A	255	Title 29-A, section 255, subsection 1, relating to motor vehicle records when a protection order is in effect	• SOS	<ul style="list-style-type: none"> <li>Estimate: 6-10 times per year</li> <li>NO CHANGE</li> </ul>		
14	29-A	257	Title 29-A, section 257, relating to the Secretary of State's motor vehicle information technology system	• SOS	<ul style="list-style-type: none"> <li>No request</li> <li>NO CHANGE</li> </ul>		
15	29-A	517	Title 29-A, section 517, subsection 4, relating to motor vehicle records concerning unmarked law enforcement vehicles	• SOS	<ul style="list-style-type: none"> <li>Estimate: 1-2 every couple of years</li> <li>NO CHANGE</li> </ul>		
16	29-A	1258	Title 29-A, section 1258, subsection 7, relating to the competency of a person to operate a motor vehicle	• SOS	<ul style="list-style-type: none"> <li>Estimate: daily</li> <li>NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>		

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17	29-A	1401	6 Title 29-A, section 1401, subsection 6, relating to driver's license digital images	• SOS	<ul style="list-style-type: none"> <li>• Estimate: handful per year</li> <li>• NO CHANGE – comply with Federal Driver Privacy Protection Act</li> </ul>		
18	30-A	503	1 Title 30-A, section 503, subsection 1, relating to county personnel records	• Counties – Joe Brown and Bob Howe?	•		
19	30-A	503	1-A Title 30-A, section 503, subsection 1-A, relating to county personnel records concerning the use of force	• Counties – Joe Brown and Bob Howe?	•		
20	30-A	2702	1 Title 30-A, section 2702, subsection 1, relating to municipal personnel records	• <i>Municipalities</i>	•		
21	30-A	2702	1-A Title 30-A, section 2702, subsection 1-A, relating to municipal personnel records concerning the use of force	• <i>Municipalities</i>	•		
22	30-A	4706	1 Title 30-A, section 4706, subsection 1, relating to municipal housing authorities	• <i>Municipalities</i>	•		
23	30-A	5242	13 Title 30-A, section 5242, subsection 13, relating to tax increment financing districts	• <i>Municipalities</i>	•		
24	32	85	3 Title 32, section 85, subsection 3, relating to criminal history record information for an applicant seeking initial licensure by the Emergency Medical Services Board	• Emergency Medical Services Board	<ul style="list-style-type: none"> <li>• Estimate: Fewer than 4 requests per year</li> <li>• Records available to public through State Police Bureau of Identification</li> <li>• NO CHANGE</li> </ul>		

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25	32	91-B	1	Title 32, section 91-B, subsection 1, relating to quality assurance activities of an emergency medical services quality assurance committee	Emergency Medical Services Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 12 requests per year</li> <li>NO CHANGE</li> </ul>	
26	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph A, relating to personal contact information and personal health information of applicant for credentialing by Emergency Medical Services Board	Emergency Medical Services Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 12 requests per year</li> <li>NO CHANGE</li> </ul>	
27	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph B, relating to confidential information as part of application for credentialing by Emergency Medical Services Board	Emergency Medical Services Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 6 requests per year</li> <li>NO CHANGE</li> </ul>	
28	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph C, relating to information submitted to the trauma incidence registry under section 87-B	Emergency Medical Services Board	<ul style="list-style-type: none"> <li>Estimate: Fewer than 4 requests per year</li> <li>NO CHANGE</li> </ul>	
29	32	91-B	1	Title 32, section 91-B, subsection 1, paragraph D, relating to examination questions used for credentialing by Emergency Medical Services Board	Emergency Medical Services Board	<ul style="list-style-type: none"> <li>No requests in many years</li> <li>NO CHANGE</li> </ul>	

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30	32	2105-A	3 Title 32, section 2105-A, subsection 3, relating to information provided by a health care facility to the State Board of Nursing that identify a patient	<ul style="list-style-type: none"> <li>Nursing Board</li> </ul>	<ul style="list-style-type: none"> <li>Patient information also protected by federal law (HIPAA)</li> <li>Redacted information can make contents of a complaint difficult to read for board members</li> <li>NO CHANGE</li> </ul>		
31	32	2109	Title 32, section 2109, relating to personal contact and health information of nurse applicants and licensees	<ul style="list-style-type: none"> <li>Nursing Board</li> </ul>	<ul style="list-style-type: none"> <li>Health information protected by federal law also</li> <li>NO BOARD DISCUSSION OR POSITION; may be superfluous to protect address and telephone number given Internet and search engines</li> </ul>		
32	32	2599	Title 32, section 2599, relating to medical staff reviews and hospital reviews – osteopathic physicians	<ul style="list-style-type: none"> <li>Osteopathic Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
33	32	2600-A	Title 32, section 2600-A, relating to personal contact and health information of osteopathic physician applicants and licensees	<ul style="list-style-type: none"> <li>Osteopathic Licensing Board</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		

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34	32	3296	Title 32, section 3296, relating to Board of Licensure in Medicine medical review committees	• Medical Licensing Board	•		
35	32	3300-A	Title 32, section 3300-A, relating to Board of Licensure in Medicine personal contact and health information about applicants and licensees	• Medical Licensing Board	•		
36	32	6115	Title 32, section 6115, subsection 1, relating to financial information provided to the Director of the Office of Consumer Credit Regulation within the Department of Professional and Financial Regulation: money transmitters	• DPFR: Consumer Credit Regulation	• No requests; similar provision in other state licensing laws • NO CHANGE		
37	32	9418	Title 32, section 9418, relating to applications for private security guard license	• DPS	• No experiences to discuss • NO CHANGE		
38	32	11305	Title 32, section 11305, subsection 3, relating to administration of the Maine Commodity Code by the Securities Administrator	• DPFR: Securities Regulation	• No application of exemption • NO CHANGE		
39	32	13006	Title 32, section 13006, relating to real estate grievance and professional standards committees hearings	• Real Estate Commission	• No experience; applies to records of hearings held by professional trade associations • NO POSITION: Why part of Real Estate Brokerage Act?		

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40	32	16607	2	Title 32, section 16607, subsection 2, relating to records obtained or filed under the Maine Securities Act	<ul style="list-style-type: none"> <li>DPFR: Securities Regulation</li> </ul>	<ul style="list-style-type: none"> <li>Seven requests: 5 requests partially denied to protect investigative records; 2 denied because only investigative records requested</li> <li>NO CHANGE</li> </ul>		
41	33	1971	4	Title 33, section 1971, subsection 4, relating to information derived from unclaimed property reports	<ul style="list-style-type: none"> <li>Treasurer</li> </ul>	<ul style="list-style-type: none"> <li>Requests infrequent</li> <li>NO CHANGE</li> </ul>		
42	34-A	1212		Title 34-A, section 1212, relating to personal information of Department of Corrections employees and contractors	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Approximately 10 times per year (during litigation)</li> <li>NO CHANGE</li> </ul>		
43	34-A	1216	1	Title 34-A, section 1216, subsection 1, relating to orders of commitment, medical and administrative records, applications and reports pertaining to any person receiving services from Department of Corrections	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requests are frequent; can be released to some requesters</li> <li>NO CHANGE</li> </ul>		
44	34-A	1216	6	Title 34-A, section 1216, subsection 6, relating to documents used to screen or assess clients of the Department of Corrections	<ul style="list-style-type: none"> <li>Dept. of Corrections</li> </ul>	<ul style="list-style-type: none"> <li>Requested occasionally</li> <li>NO CHANGE</li> </ul>		

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45	34-A	5210	4	Title 34-A, section 5210, subsection 4, relating to the State Parole Board report to the Governor	• Dept. of Corrections	<ul style="list-style-type: none"> <li>Requested 2-3 times per year</li> <li>AMEND: clarify that applies regardless of entity advising Governor</li> </ul>		
46	34-A	9877	4	Title 34-A, section 9877, subsection 4, relating to the release by the Interstate Commission for Adult Offender Supervision of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>No experience – records are of the governing body, not Maine</li> <li>NO CHANGE</li> </ul>		
47	34-A	9903	8	Title 34-A, section 9903, subsection 8, relating to the release by the Interstate Commission for Juveniles of records that adversely affect personal privacy rights or proprietary interests	• Dept. of Corrections	<ul style="list-style-type: none"> <li>No experience – records are of the governing body, not Maine</li> <li>NO CHANGE</li> </ul>		
48	34-B	1207	1	Title 34-B, section 1207, subsection 1, relating to mental health and mental retardation orders of commitment and medical and administrative records, applications and reports pertaining to any DHHS client	• DHHS	<ul style="list-style-type: none"> <li>DHHS does not collect data on requests</li> <li>NO CHANGE</li> </ul>		
49	34-B	1223	10	Title 34-B, section 1223, subsection 10, relating to information about a person with mental retardation or autism accessed by the Maine Developmental Services Oversight and Advisory Board	• DHHS	<ul style="list-style-type: none"> <li>Relatively new board</li> <li>One request</li> <li>NO CHANGE</li> </ul>		

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50	34-B	1931	Title 34-B, section 1931, subsection 6, relating to the records of the Mental Health Homicide, Suicide and Aggravated Assault Review Board	<ul style="list-style-type: none"> <li>DHHS</li> </ul>	<ul style="list-style-type: none"> <li>Few cases</li> <li>Legal opinion that does not comply with HIPAA</li> <li>NO CHANGE</li> <li>Overlapping responsibilities – may not be needed</li> </ul>		
51	34-B	3864	Title 34-B, section 3864, subsection 5, relating to mental health involuntary commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch?</li> <li>DPS: State Police</li> </ul>	<ul style="list-style-type: none"> <li>Judicial Branch: No requests NO CHANGE</li> <li>DPS: State Police:</li> </ul>		
52	34-B	3864	Title 34-B, section 3864, subsection 12, relating to abstract of involuntary commitment order provided to State Bureau of Identification	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>Judicial Branch: No requests NO CHANGE</li> </ul>		
53	34-B	5005	Title 34-B, section 5005, subsection 6, relating to records and accounts related to request for action by Office of Advocacy for person with mental retardation or autism	<ul style="list-style-type: none"> <li>DHHS/Maine Disability Rights Commission</li> <li>Replaced 8/12 by §5005-A, sub-§5 (PL 2011, c. 657)</li> </ul>	<ul style="list-style-type: none"> <li>DHHS: no data on requests</li> <li>NO CHANGE</li> <li>DHHS will be contracting with DRC</li> </ul>		
54	34-B	5475	Title 34-B, section 5475, subsection 3, relating to mental retardation judicial certification hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
55	34-B	5476	Title 34-B, section 5476, subsection 6, relating to mental retardation judicial commitment hearings	<ul style="list-style-type: none"> <li>Judicial Branch</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		

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56	34-B	5605	15	Title 34-B, section 5605, subsection 15, relating to records of persons receiving mental retardation or autism services	• DHHS	• No data on requests • NO CHANGE		
57	34-B	7014	1	Title 34-B, section 7014, subsection 1, relating to court proceedings concerning sterilization	• Judicial Branch	• No requests • NO CHANGE		
58	35-A	114	1	Title 35-A, section 114, subsection 1, relating to utility personnel records, not open to PUC	• PUC	• No requests • NO CHANGE		
59	35-A	704	5	Title 35-A, section 704, subsection 5, relating to utility records concerning customer information, Consumer Assistance Division	• PUC	• No requests • NO CHANGE		
60	35-A	1311-A		Title 35-A, section 1311-A, relating to Public Utilities Commission protective orders	• PUC	• Rarely get requests • NO CHANGE		
61	35-A	1311-B	1, 2, 4	Title 35-A, section 1311-B, subsections 1, 2 and 4, relating to public utility technical operations information	• PUC	• Occasional requests • NO CHANGE		
62	35-A	1316-A		Title 35-A, section 1316-A, relating to Public Utilities Commission communications concerning utility violations	• PUC	• No requests • NO CHANGE		
63	35-A	8703	5	Title 35-A, section 8703, subsection 5, relating to telecommunications relay service communications	• PUC	• Does not come through PUC • Could be worded more clearly		
64	35-A	9207	1	Title 35-A, section 9207, subsection 1, relating to information about communications service providers	• PUC • ConnectME Authority	• No requests • NO CHANGE		

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64.5	36	191		Title 36, section 191, relating to tax returns	<ul style="list-style-type: none"> <li>• Maine Revenue Services</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
65	36	575-A	2	Title 36, section 575-A, subsection 2, relating to forest management and harvest plan provided to Bureau of Forestry and information collected for compliance assessment for Tree Growth Tax Law	<ul style="list-style-type: none"> <li>• Dept. of Conservation</li> <li>• Maine Revenue Services</li> </ul>	<ul style="list-style-type: none"> <li>• (added by PL 2011, c. 619)</li> </ul>		
66	36	579		Title 36, section 579, relating to the Maine Tree Growth Tax Law concerning forest management plans	<ul style="list-style-type: none"> <li>• <i>Municipal assessors</i></li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
67	36	581-G	3	Title 36, section 581-G, subsection 3, relating to addresses, telephone numbers, electronic mail addresses of forest landowners owning less than 1,000 acres	<ul style="list-style-type: none"> <li>• Dept. of Conservation</li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
68	36	841	2	Title 36, section 841, subsection 2, relating to property tax abatement application information and proceedings	<ul style="list-style-type: none"> <li>• <i>Municipal officers</i></li> </ul>	<ul style="list-style-type: none"> <li>•</li> </ul>		
69	36	1106-A	3	Title 36, section 1106-A, subsection 3, paragraph D, relating to forest management and harvest plan made available for Farm and Open Space Tax Law	<ul style="list-style-type: none"> <li>• <i>Municipal assessors</i></li> </ul>	<ul style="list-style-type: none"> <li>• (added by PL 2011, c. 618, §7)</li> </ul>		
70	36	4315	1-A	Title 36, section 4315, subsection 1-A, relating to the transportation of wild blueberries	<ul style="list-style-type: none"> <li>• Wild Blueberry Commission</li> </ul>	<ul style="list-style-type: none"> <li>• No requests</li> <li>• NO CHANGE</li> </ul>		
71	36	4316	4	Title 36, section 4316, subsection 4, relating to wild blueberries audits by Department of Agriculture	<ul style="list-style-type: none"> <li>• Wild Blueberry Commission</li> <li>• Dept. of Agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• WBC: Administration does not apply to WBC</li> <li>• Dept. of Ag.:</li> </ul>		

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72	36	6760		Title 36, section 6760, relating to employment tax increment financing	<ul style="list-style-type: none"> <li>DAFS –</li> <li>Commissioner</li> <li>State Tax Assessor</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		
73	37-B	506		Title 37-B, section 506, relating to Department of Defense, Veterans and Emergency Management, Bureau of Maine Veterans' Services benefits	<ul style="list-style-type: none"> <li>DVEM: Bureau of Veterans' Affairs</li> </ul>	<ul style="list-style-type: none"> <li>NO CHANGE</li> </ul>		
74	37-B	708	3	Title 37-B, section 708, subsection 3, relating to documents collected or produced by the Homeland Security Advisory Council	<ul style="list-style-type: none"> <li>DVEM: MEMA</li> </ul>	<ul style="list-style-type: none"> <li>NO CHANGE</li> </ul>		
75	37-B	797	7	Title 37-B, section 797, subsection 7, relating to Department of Defense, Veterans and Emergency Management, Maine Emergency Management Agency reports of hazardous substance transportation routes	<ul style="list-style-type: none"> <li>DVEM: MEMA</li> </ul>	<ul style="list-style-type: none"> <li>NO CHANGE</li> </ul>		
76	38	100-A	1	Title 38, section 100-A, subsection 1, relating to complaints and investigative records concerning vessel pilots	<ul style="list-style-type: none"> <li>DOT: Marine Pilotage Commission</li> </ul>	<ul style="list-style-type: none"> <li></li> </ul>		

**Public Records Exceptions Subcommittee**  
**Existing Public Records Exceptions, Titles 26 – 39-A**  
Revised 8/7/2012 11:31 AM

shaded = tabled from 7/16/12

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
77	38	345-A	Title 38, section 345-A, subsection 4, relating to information submitted to the Department of Environmental Protection and Board of Environmental Protection concerning trade secrets	<ul style="list-style-type: none"> <li>DEP</li> <li>BEP</li> </ul>	<ul style="list-style-type: none"> <li>DEP: subpoenas issued for trade secret info</li> <li>BEP: No</li> <li>NO POSITION; Clarify by including cross-reference to definition of trade secret ?</li> </ul>		
78	38	414	Title 38, section 414, subsection 6, relating to records and reports obtained by the Board of Environmental Protection in water pollution control license application procedures	<ul style="list-style-type: none"> <li>DEP</li> <li>BEP</li> </ul>	<ul style="list-style-type: none"> <li>DEP: 1-2 requests per year</li> <li>NO CHANGE</li> <li>BEP: No need to access info in proceedings</li> <li>NO POSITION; Clarify by including cross-reference to definition of trade secret?</li> </ul>		
79	38	470-D	Title 38, section 470-D, relating to individual water withdrawal reports	<ul style="list-style-type: none"> <li>DEP</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>Information reported in aggregate</li> <li>NO CHANGE</li> </ul>		

## Public Records Exceptions Subcommittee

### Existing Public Records Exceptions, Titles 26 – 39-A

Revised 8/7/2012 11:31 AM

shaded = tabled from 7/16/12

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
80	38	585-B	Title 38, section 585-B, subsection 6, relating to mercury reduction plans for air emission source emitting mercury	• DEP	<ul style="list-style-type: none"> <li>No requests by facilities to keep information confidential</li> <li>REPEAL</li> </ul>		
81	38	585-C	Title 38, section 585-C, subsection 2, relating to the hazardous air pollutant emissions inventory	• DEP	<ul style="list-style-type: none"> <li>No requests by facilities to keep information confidential for at least 10 years</li> <li>REPEAL</li> </ul>		
82	38	1310-B	Title 38, section 1310-B, subsection 2, relating to hazardous waste information, information on mercury-added products and electronic devices and mercury reduction plans	• DEP	<ul style="list-style-type: none"> <li>Few requests for each type of info;</li> <li>Concerns that electronic filing often means DEP has multiple copies of confidential information; lack of locked storage space for confidential records</li> <li>NO CHANGE</li> </ul>		
83	38	1610	Title 38, section 1610, subsection 6-A, paragraph F, relating to annual sales data on the number and type of computer monitors and televisions sold by the manufacturer in this State over the previous 5 years	• DEP	<ul style="list-style-type: none"> <li>No requests</li> <li>Manufacturers do mark portions of annual filing as confidential and info is segregated from public files</li> <li>NO CHANGE</li> </ul>		

# Public Records Exceptions Subcommittee

## Existing Public Records Exceptions, Titles 26 – 39-A

Revised 8/7/2012 11:31 AM

shaded = tabled from 7/16/12

TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
84	38	1661-A	Title 38, section 1661-A, subsection 4, relating to information submitted to the Department of Environmental Protection concerning mercury-added products	• DEP	<ul style="list-style-type: none"> <li>2 requests made for confidential info</li> <li>DEP followed process in § 1310-B, sub-§ 2 and requested info was able to be provided or summarized info provided</li> <li>NO CHANGE</li> </ul>		
85	38	2307-A	Title 38, section 2307-A, subsections 1 and 5, relating to information submitted to the Department of Environmental Protection concerning toxics use and hazardous waste reduction (REPEALED 7/1/12)	• DEP	<ul style="list-style-type: none"> <li>Only 1 request</li> <li>Replaced by new statute; rules pending to implement confidentiality provision (38 MRSA § 2324, sub-§3)</li> <li>CONTINUE; NO CHANGE</li> </ul>		
86	39-A	153	Title 39-A, section 153, subsection 5, relating to the Workers' Compensation Board abuse investigation unit	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>Average of 6 times per year</li> <li>NO CHANGE</li> </ul>		
87	39-A	153	Title 39-A, section 153, subsection 9, relating to the Workers' Compensation Board audit working papers	• Workers' Compensation Board	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		

# Public Records Exceptions Subcommittee

## Existing Public Records Exceptions, Titles 26 – 39-A

Revised 8/7/2012 11:31 AM

shaded = tabled from 7/16/12

	TITLE	SECTION	SUB-SECTION	DESCRIPTION	DEPARTMENT/ AGENCY	COMMENTS	SUBCOMMITTEE RECOMMENDATIONS	ADVISORY COMMITTEE ACTION ON RECOMMENDATIONS
88	39-A	355-B	11	Title 39-A, section 355-B, subsection 11, relating to records and proceedings of the Workers' Compensation Supplemental Benefits Oversight Committee concerning individual claims	<ul style="list-style-type: none"> <li>Workers' Compensation Board</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
89	39-A	403	3	Title 39-A, section 403, subsection 3, relating to workers' compensation self-insurers proof of solvency and financial ability to pay	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>NO CHANGE</li> </ul>		
90	39-A	403	15	Title 39-A, section 403, subsection 15, relating to records of workers' compensation self-insurers	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>Requests are rare</li> <li>NO CHANGE</li> </ul>		
91	39-A	409		Title 39-A, section 409, relating to workers' compensation information filed by insurers concerning the assessment for expenses of administering self-insurers' workers' compensation program	<ul style="list-style-type: none"> <li>BOI</li> </ul>	<ul style="list-style-type: none"> <li>No requests</li> <li>AMEND; clarify that already included within § 403, sub-§ 15 exception</li> </ul>		

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**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

**Sec. 1. 22 MRSA §8754** is amended to read:

**§8754. Division duties**

The division has the following duties under this chapter.

**1. Initial review; other action.** Upon receipt of a notification or report of a sentinel event, the division shall complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. Upon receipt of a notification or report of a suspected sentinel event the division shall determine whether the event constitutes a sentinel event and complete an initial review and may take such other action as the division determines to be appropriate under applicable rules and within the jurisdiction of the division. The division may conduct on-site reviews of medical records and may retain the services of consultants when necessary to the division.

A. The division may conduct on-site visits to health care facilities to determine compliance with this chapter.

B. Division personnel responsible for sentinel event oversight shall report to the division's licensing section only incidences of immediate jeopardy and each condition of participation in the federal Medicare program related to the immediate jeopardy for which the provider is out of compliance.

**2. Procedures.** The division shall adopt procedures for the reporting, reviewing and handling of information regarding sentinel events. The procedures must provide for electronic submission of notifications and reports.

~~**3. Confidentiality.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are confidential and privileged information.~~

~~A. Privileged and confidential information under this subsection is not:~~

~~(1) Subject to public access under Title 1, chapter 13, except for data developed from the reports that do not identify or permit identification of the health care facility;~~

~~(2) Subject to discovery, subpoena or other means of legal compulsion for its release to any person or entity; or~~

**Public Records Exceptions Subcommittee**

Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

~~(3) Admissible as evidence in any civil, criminal, judicial or administrative proceeding.~~

~~B. The transfer of any information to which this chapter applies by a health care facility to the division or to a national organization that accredits health care facilities may not be treated as a waiver of any privilege or protection established under this chapter or other laws of this State.~~

~~C. The division shall take appropriate measures to protect the security of any information to which this chapter applies.~~

~~D. This section may not be construed to limit other privileges that are available under federal law or other laws of this State that provide for greater peer review or confidentiality protections than the peer review and confidentiality protections provided for in this subsection.~~

~~E. For the purposes of this subsection, "privileged and confidential information" does not include:~~

~~(1) Any final administrative action;~~

~~(2) Information independently received pursuant to a 3rd party complaint investigation conducted pursuant to department rules; or~~

~~(3) Information designated as confidential under rules and laws of this State.~~

This subsection does not affect the obligations of the department relating to federal law.

**3-A. Notifications and reports subject to Title 1, chapter 13.** Notifications and reports filed pursuant to this chapter and all information collected or developed as a result of the filing and proceedings pertaining to the filing, regardless of format, are subject to public access under Title 1, chapter 13, except for:

A. Information designated as confidential under federal law; and

B. Data developed from the reports that identifies or permits identification of a patient of a health care facility.

*{Are there other types or categories of information reported to the department that should be designated as confidential??}*

**Public Records Exceptions Subcommittee**

Proposed Draft of Title 22, section 8754 related to sentinel events

Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

**4. Report.** The division shall submit an annual report by February 1st each year to the Legislature, health care facilities and the public that includes summary data of the number and types of sentinel events of the prior calendar year by type of health care facility, rates of change and other analyses and an outline of areas to be addressed for the upcoming year.

**Summary**

This draft amendment repeals the provision making confidential notifications, reports and other information filed with the department related to sentinel events. The amendment makes the information subject to public access pursuant to Title 1, chapter 13, except for information designated as confidential under federal law and information that identifies or permits identification of a patient of a health care facility.

**Public Records Exceptions Subcommittee**  
Proposed Draft of Title 22, section 8754 related to sentinel events  
Based on Subcommittee Vote at July 16<sup>th</sup> Meeting

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**Public Records Exceptions Subcommittee**  
Proposed Draft #1

**TITLE 22**  
**CHAPTER 271**  
**HEALTH PROGRAMS**

**SUBCHAPTER 2**  
**COMMUNITY HEALTH INVESTIGATION AND INFORMATION**

**22 §1696-A. Findings and intent**

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

**Public Records Exceptions Subcommittee**  
Proposed Draft #1

**22 §1696-B. Short title**

This subchapter may be cited as the "Community Right-to-Know Act."

**22 §1696-C. Community health information project**

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

**22 §1696-D. Response to requests**

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about~~ chemical substances in use or present at a specific location, ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~ The director ~~may provide information on~~ must include the identity of the chemical substance if it is not a trade secret, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director may withhold the identity of the chemical substance if it is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius of the municipality or within a 50-mile radius of a residence of the individual requesting the information.

**Public Records Exceptions Subcommittee**  
Proposed Draft #1

**22 §1696-E. Cooperation with state agencies**

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.

**22 §1696-F. Provision of information; trade secrets**

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. The identity of a toxic or hazardous substance that is a trade secret is confidential; all other information provided is a public record. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~

**SUMMARY**

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public records, with the exception of the identity of substances when the identity is a trade secret. These amendments require the director to release the information that is public upon request.



**Public Records Exceptions Subcommittee**  
Proposed Draft #2  
(no protection for trade secrets)

**TITLE 22**  
**CHAPTER 271**  
**HEALTH PROGRAMS**

**SUBCHAPTER 2**  
**COMMUNITY HEALTH INVESTIGATION AND INFORMATION**

**22 §1696-A. Findings and intent**

The Legislature finds and declares that the proliferation of hazardous substances in the environment poses a growing threat to the public health, safety and welfare; that the constantly increasing number and variety of hazardous substances, and the many routes of exposure to them make it difficult and expensive to adequately monitor and detect any adverse health effects attributable to them; that individuals are often able to detect and thus minimize effects of exposure to hazardous substances if they are aware of the identity of the substances and the early symptoms of unsafe exposure; and that individuals have an inherent right to know the full range of the risks they face so that they can make reasoned decisions and take informed actions concerning their employment and their living conditions.

The Legislature further declares that accidental releases of hazardous materials pose a threat to public health and safety and that there are serious questions concerning the State's ability to respond to these emergencies in a coordinated and effective manner; and that local health, fire, police, safety and other government officials require information about the identity, characteristics and quantities of hazardous substances used and stored in communities within their jurisdictions, in order to adequately plan for, and respond to, emergencies and enforce compliance with applicable laws and rules concerning these substances.

The Legislature further declares that the extent of the toxic contamination of the air, water, and land in this State has caused a high degree of concern among its residents; and that much of this concern is needlessly aggravated by the unfamiliarity of these substances to residents.

The Legislature determines that it is in the public interest for the State to examine its emergency response mechanisms and procedures for accidents involving hazardous materials, to establish a comprehensive program for the disclosure of information about hazardous substances in the community and to provide a procedure whereby residents of this State may gain access to this information.

**Public Records Exceptions Subcommittee**

Proposed Draft #2

(no protection for trade secrets)

**22 §1696-B. Short title**

This subchapter may be cited as the "Community Right-to-Know Act."

**22 §1696-C. Community health information project**

The department shall undertake a community health information project under the auspices of the Environmental Health Program in the Bureau of Health. The project shall respond, subject to this subchapter, to requests made by state agencies, municipalities or individuals for information on potential health hazards posed by the use of hazardous chemicals. To meet these requests, the director shall establish a Community Health Information Clearinghouse which shall contain information on the health implications of chemicals in use in the home and the workplace.

**22 §1696-D. Response to requests**

When requested under this subchapter, the director shall provide, ~~at a minimum, the identity of information about~~ chemical substances in use or present at a specific location, ~~unless the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it.~~ The director ~~may provide~~ information on must include the identity of the chemical substance, the chronic and acute health hazards posed by the substance, potential routes of exposure, emergency procedures and other subjects as appropriate. The director shall report in writing annually by January 1st to the joint standing committee of the Legislature having jurisdiction over human resources on the number and type of requests received and on the director's response to these requests.

In the case of a request for information from a municipality or individual concerning chemicals in use or present at a specific site, the director shall be required to provide information pursuant to this Act only if the specific site is within a 50-mile radius of the municipality or within a 50-mile radius of a residence of the individual requesting the information.

**22 §1696-E. Cooperation with state agencies**

**Public Records Exceptions Subcommittee**  
Proposed Draft #2  
(no protection for trade secrets)

The director may obtain, upon request, information from and the assistance of the Bureau of Labor Standards, Department of Environmental Protection, Bureau of Pesticides Control and other state agencies as appropriate in the conduct of investigations under this chapter. ~~Information obtained under this section shall be subject to the trade secret provisions governing the agencies supplying the information.~~

**22 §1696-F. Provision of information; ~~trade secrets~~**

~~A person may withhold the identity of a specific toxic or hazardous substance, if the substance is a trade secret. For purposes of this section, "trade secret" means any confidential formula, pattern, process, device, information or compilation of information, including chemical name, that is used in any employer's business that gives the employer an opportunity to obtain any advantage over competitors who do not know or use it. All other information about a toxic or hazardous substance, including its identity, routes of exposure, effects of exposure, type and degree of hazard and emergency treatment and response procedures, must be provided if requested by the Director of the Bureau of Health and is considered a public record. All information about a toxic or hazardous substance is a public record.~~

**SUMMARY**

These amendments clarify that all the information provided upon request to the Director of the Bureau of Health about toxic or hazardous substances in use or present at a specific location are public. These amendments require the director to release the information that is public upon request.

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**Public Records Exceptions Subcommittee**

Proposed draft letter to Department of Health and Human Services

**Re: Title 22, section 3188, related to the Maine Managed Care Insurance Plan  
Title 22, section 3192, related to the Community Health Access Program**

Mary C. Mayhew  
Commissioner  
Department of Health and Human Services  
221 State Street  
Augusta, Maine 04333-0040

Dear Commissioner Mayhew:

The Public Records Exceptions Subcommittee of the Right to Know Advisory Committee reviews existing public records exceptions in the statutes. The Subcommittee is expected to review and evaluate each public records exception and make a recommendation for keeping it as is, amending it or repealing it altogether. Title 1, section 432 contains the criteria for the review and evaluation.

As part of its review of exceptions in Titles 22 through 25 during 2011, the Subcommittee considered 2 exceptions in Title 22 relating to records collected or maintained by programs authorized within the Department of Health and Human Services that have never been implemented:

- Title 22, section 3188, subsection 4 relating to the Maine Managed Care Insurance Plan Demonstration program for uninsured individuals; and
- Title 22, section 3192, subsection 13 relating to medical data of the Community Health Access Program.

Last year, the Department of Health and Human Services and the Legislature's Health and Human Services Committee recommend to the Subcommittee that all of sections 3188 and 3192 be repealed, including the specific confidentiality provisions, because the statutes have never been used. However, the Subcommittee did not include language to repeal these sections in proposed legislation because the underlying policy issues are beyond the scope of the Subcommittee's charge. We are writing to inform you of the Subcommittee's decision so the department may consider whether to recommend that the statutory provisions authorizing the Maine Managed Care Insurance Plan Demonstration program and the Community Health Access Program be repealed in any proposed legislation put forward by the department for consideration by the 126<sup>th</sup> Legislature.

Thank you for your time and attention to this matter. Please feel free to contact staff, Peggy Reinsch or Colleen McCarthy Reid, if you have questions. They can be reached at the Office of Policy and Legal Analysis at 287-1670.



Agenda item 4  
8/8/12

RECEIVED  
AUG - 7 2012

STATUTE: 23 MRSA §4251, sub§-10

CONTACT PERSON: Toni L. Kemmerle, Chief counsel, Maine DOT

CONTACT PERSON'S EMAIL ADDRESS: Toni.Kemmerle@Maine.gov

**ANSWERS TO QUESTIONS PERTAINING TO 23 MRSA §4251, sub§ 10**

1. Please describe your agency's experience in administering or applying this public records exception. Please include a description of the records subject to the exception, an estimate of the frequency of its application, and an estimate of how frequently the exception is cited in denying a request for production of records (whether the denial occurs in response to an FOA request or in administrative or other litigation).

**To date, we have had no experience with administering or applying this public records exception because no private entity has proposed a public-private partnership for a transportation project with an initial capital cost of \$25,000,000.**

2. Please state whether your agency supports or opposes continuation of this exception, and explain the reasons for that position.

**Maine DOT supports the continuation of this exception because a proposal of this magnitude will require that the proposer develop and share competitive strategies and confidential business information that could lead to a competitive disadvantage if made public prior to the acceptance or rejection of the proposal by the department. Without this exception, private businesses would be reluctant to share information necessary for the department to evaluate proposals for public-private partnerships under this section.**

3. Please identify any problems that have occurred in the application of this exception. Is it clear that the records described are intended to be confidential under the FOA statutes? Is the language of the exception sufficiently clear in describing the records that are covered?

**We have had no experience applying this exception to date. We believe that the records described are intended to be confidential and that the language of the section is clear.**

4. Does your agency recommend changes to this exception?

**We do not recommend changes at this time.**

5. Please identify stakeholders whose input should be considered in the evaluation of this exception, with contact information if that is available.

**We cannot identify stakeholders at this time because we have had no proposals submitted under this section to date.**

6. Please provide any further information that you believe is relevant to the Advisory Committee's review.

**We have no further information to submit at this time.**

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\*49329 23 M.R.S.A. § 4251

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 23. HIGHWAYS**  
**PART 5. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 410. DEPARTMENT OF TRANSPORTATION**  
**SUBCHAPTER 5. PUBLIC-PRIVATE PARTNERSHIPS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 4251. Public-private partnerships; transportation projects**

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership.

B. "Project" means the initial capital development of a transportation facility.

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter.

D. "Transportation facility" means a facility that is or if developed would be within the jurisdiction of the department including a highway, bridge, railroad line, pier, airport, trail, ferry vessel, building or other improvement.

2. Applicability. This subchapter applies to a proposal or agreement for a private entity to form a public-private partnership when the department estimates that the initial capital cost of a project is \$25,000,000 or more or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls. Nothing in this section is intended to prohibit or otherwise affect programs that do not meet the criteria of this subsection.

3. Authorization. Notwithstanding any other provision of law, the department is authorized to receive or solicit proposals to form a public-private partnership with respect to a transportation facility. Proposals must be reviewed in accordance with this subchapter. Upon approval of the Legislature as provided in this subchapter, the department may enter into an agreement.

\*49330 4. Standards for review. Before submitting a proposal to the Legislature for approval the department must find that the proposal meets the following standards.

A. The purpose of and need for the transportation facility must be consistent with the long-term planning of the department.

B. The private entity must have the financial, technical and operational capacity to discharge the

responsibilities set forth in the proposal cost-effectively and responsibly as determined by the department. This capacity must include, but is not limited to, meeting department prequalification standards for professional engineering services and general contracting.

C. The proposed transportation facility must be owned, controlled, operated and maintained in a manner satisfactory to the department.

D. The proposal must be cost-effective in the long term.

E. The proposal must limit the use of state capital funding to less than 50% of the initial capital cost of the transportation facility and to the extent practicable minimize the use of transportation funding sources such as the Highway Fund, general obligation bonds supported by the Highway Fund, the TransCap Trust Fund under Title 30-A, section 6006-G and program funding provided by the Federal Highway Administration.

F. If the proposed transportation facility is to be supported by tolls or other user fees, the private entity must provide a traffic and revenue study prepared by an expert acceptable to the department and national bond rating agencies. The private entity must also provide a finance plan consistent with the traffic and revenue study that identifies the proposal costs, revenues by source, financing, major assumptions, internal rate of return on private investments and whether any government funds are assumed to deliver a cost-feasible project and that provides a total cash flow analysis beginning with implementation of the project and extending for the term of the agreement.

G. The proposal must demonstrate safeguards adequate to ensure that no significant additional costs or service disruptions would be borne by the traveling public and residents of the State if the private entity defaults or cancels the agreement.

H. The proposal must include a provision that any contractor performing construction work required by the agreement must furnish performance and payment bonds or irrevocable letters of credit in an amount equal to the cost of the construction work. Any action on such a payment bond or irrevocable letter of credit is subject to the requirements of Title 14, section 871, subsection 4.

**\*49331** I. The proposal and the transportation facility must comply with all requirements of applicable federal, state and local laws and department rules, policies and procedures.

J. The proposal must identify the law enforcement jurisdictions and responsibilities relative to the transportation facility.

K. The proposal must provide that all reasonable costs of substantially affected local governments and utilities related to the transportation facility are borne by the private entity or are otherwise provided for to the satisfaction of the department.

L. The proposal and transportation facility are in the best interest of the public.

5. Proposal and selection processes; solicited and unsolicited. The department may request proposals from private entities for a public-private partnership for a transportation facility or may accept unsolicited proposals pursuant to this subsection.

A. If the department receives an unsolicited proposal and determines that it meets the standards in this subchapter, the department shall publish a notice of the receipt of the proposal on the department's publicly accessible website or through advertisements in newspapers. If a notice is published exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed transportation facility is to be located if any such newspaper is circulated in that county. The notice must provide that the department will accept, for 120 days after the initial date of publication, proposals meeting the standards in subsection 4 from other private entities for transportation facilities that satisfy the same basic purpose and need. A copy of the notice must be mailed to each local government in the area affected by the proposal.

B. After the proposal or proposals have been received, and any public notification period has expired, the department shall rank the proposals in order of preference. In ranking the proposals, the department may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative engineering or cost-reduction terms, finance plans and the need for state funds to deliver the project and discharge the agreement. The department shall undertake negotiations with the private entity submitting the 1st-ranked proposal. If the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations with that entity and the department may negotiate with the other entities in order of the ranking of their proposals. If only one proposal is received, the department shall negotiate in good faith and, if the department is not satisfied with the results of the negotiations, the department may, at its sole discretion, terminate negotiations.

\*49332 C. The department may require that the private entity assume responsibility for all costs incurred by the State or local governments before execution of the agreement, including costs of retaining independent experts to review, analyze and advise the department with respect to the proposal.

6. Tolls; fares. An agreement may authorize the private entity to impose tolls or fares for the use of the transportation facility. The following provisions apply to such an agreement.

A. The agreement must be consistent with the traffic and revenue study required under subsection 4, paragraph F.

B. The agreement must ensure that the transportation facility and any related toll facility are properly operated and maintained in accordance with department standards or standards generally accepted in the transportation industry.

C. The agreement must include provisions governing changes in tolls or fares.

D. The department may require provisions in the agreement that ensure that a negotiated portion of revenues from a toll-generating or a fare-generating transportation facility is returned to the department over the life of the agreement.

7. Exercise of powers. If the department exercises its power of eminent domain for the development and construction of a transportation facility pursuant to this subchapter, the department must retain ownership rights and interests taken. The State may provide maintenance, law enforcement and other services with respect to a transportation facility owned by a private entity when the agreement provides for reasonable reimbursement for such services.

8. Term of agreement. An agreement may not exceed a term of 50 years unless the Legislature, upon the recommendation of the Commissioner of Transportation, approves a longer term.

9. Legislative approval. If the department determines that a public-private partnership proposal and draft agreement meets the standards of this subchapter, the department shall submit to the Legislature a bill that authorizes the agreement. The bill must include a statement that the proposal meets the standards in subsection 4, a summary of the substance of the draft agreement and a description of the nature and amount of state investment, if any, including effects on programmed capital work.

10. Confidentiality of proposals and negotiations. All records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda or other materials prepared, used or submitted in connection with any proposal considered under this subchapter are confidential and not subject to public review until the department determines that the proposal meets the standards of this subchapter or until the proposal is finally rejected by the department.

\*49333 11. Report of proposals. By February 1st, annually, the department shall provide to the joint standing committee of the Legislature having jurisdiction over transportation matters a report summarizing all proposals that the department has determined meet the standards of this subchapter or that have been finally rejected during the previous calendar year.

12. Rules. The department may adopt rules to implement this subchapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [FN1]

**CREDIT(S)**

2009, c. 648, § A-1.

[FN1] 5 M.R.S.A. § 8071 et seq.

<General Materials (GM) - References, Annotations, or Tables>

\*49325 23 M.R.S.A. § 4244

**MAINE REVISED STATUTES ANNOTATED**  
**TITLE 23. HIGHWAYS**  
**PART 5. DEPARTMENT OF TRANSPORTATION**  
**CHAPTER 410. DEPARTMENT OF TRANSPORTATION**  
**SUBCHAPTER 4. CONTRACTS**

*Current with emergency legislation through Chapter 478 of the 2011 Second Regular Session  
of the 125th Legislature*

**§ 4244. Design-build contracting**

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Best value" means the highest overall value to the State, considering quality and cost.
- B. "Design-build contracting" means a method of project delivery whereby a single firm is contractually responsible for performing design, construction and related services.
- C. "Major participant" means a firm that would have a major role in the design or construction of a project as specified by the department in its procurement documents.
- D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel, building or other improvement being constructed or rehabilitated, including all professional services, labor, equipment, materials, tools, supplies, warranties and incidentals needed for a complete and functioning product.
- E. "Proposal" means an offer by the proposer to design and construct the project in accordance with all request-for-proposals provisions.
- F. "Proposer" means an individual, firm, corporation, limited liability company, partnership, joint venture, sole proprietorship or other entity that submits a proposal.
- G. "Public notice" means notice given electronically through the department's publicly accessible website or through advertisements in newspapers. If notice is to be given exclusively in newspapers, the notice must appear in 2 or more public newspapers circulated wholly or in part in the State and in one public newspaper circulated wholly or in part in the county where the proposed project is located if any such newspaper is circulated in that county.
- H. "Quality" means those features that the department determines are most important to the project. Quality criteria include design, constructability, long-term maintenance costs, aesthetics, local impacts, traveler and other user costs, service life, time to construct and other factors that the department considers to be in the best interest of the State.

\*49326 2. Authorization. Notwithstanding section 4243 or any other provision of law, the department may use design-build contracting to deliver projects. The department may evaluate and select proposals on either a best-value or low-bid basis. If the scope of work requires substantial engineering judgment, the

5

quality of which may vary significantly, as determined by the department, then the basis of award must be the best value.

The department retains the authority to terminate the contracting process at any time, to reject any proposal, to waive technicalities or to solicit new proposals if the department determines that doing so is in the best interest of the State.

3. Prequalification. A proposer must be prequalified to be eligible to submit a proposal. A proposer must be prequalified by a project-specific request-for-qualifications process described in this subsection, or a proposer may be a team formed of contractors and designers that are each prequalified separately for design-build contracting in accordance with ongoing prequalification procedures established by the department. The department shall specify the method of prequalification in its discretion, except that if the basis of award is the best value, then prequalification must be through a project-specific request-for-qualifications process.

The department shall give public notice of a project-specific request-for-qualifications process. The department shall issue a request-for-qualifications package to all firms requesting one in accordance with the notice. Interested firms shall supply, for themselves and all major participants, all information required by the department. The department may investigate and verify all information received. All financial information, trade secrets or other information customarily regarded as confidential business information submitted to the department is confidential. The department shall evaluate and rate all firms submitting a conforming statement of qualifications and select the most qualified firms to receive a request for proposals. The department may select any number of firms, except that, if the department fails to prequalify at least 2 firms, the department shall repeat the request-for-qualifications process or select a different project delivery method.

4. Request for proposals. If prequalification is through project-specific prequalification, the department shall issue a request for proposals to those firms prequalified. If prequalification is through ongoing prequalification procedures established by the department, the department shall give public notice of the request for proposals. The request for proposals must set forth the scope of work, design parameters, construction requirements, time constraints and all other requirements that have a substantial impact on the cost or quality of the project and the project development process, as determined by the department. The request for proposals must include the criteria for acceptable proposals and must include a request-for-information process that allows for clarification of such criteria. For projects to be awarded on a best-value basis, the scoring process and quality criteria must also be contained in the request for proposals. The request for proposals may also provide for a process for the department to meet with each proposer individually to review conceptual technical elements of each proposal before full proposal submittal for the purposes of identifying design or other technical elements that are unacceptable to the department or that obviously would cause rejection of the proposal as nonresponsive. All such conceptual technical meetings, including submittals and responses, are confidential until award of the contract, but the department may issue addenda to all proposers to clarify design or other technical elements that will or will not be allowed. Upon award of the contract and after resolution of any procurement disputes, the department shall return documents submitted by unsuccessful proposers upon request. The request for proposals may also provide for a stipend upon specified terms to unsuccessful proposers that submit proposals conforming to all material request-for-proposals requirements as determined by the department.

**\*49327** 5. Low-bid award. If the basis of the award is lowest cost, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously. The department shall first review technical proposals for responsiveness. The department shall award the contract to the proposer that submits a responsive proposal with the lowest price, if the proposal meets all material request-for-proposals requirements as determined by the department.

6. Best-value award. If the basis of the award is best value, then each proposal must be submitted by the proposer to the department in 2 separate components, a sealed technical proposal and a sealed price proposal. These 2 components must be submitted simultaneously.

The department shall open first each technical proposal and evaluate and score it based on the quality criteria contained in the request for proposals. The request for proposals may provide that the range between the highest and lowest quality score of responsive technical proposals must be limited to an amount certain. During this evaluation process, the price proposals must remain sealed and all technical proposals are confidential.

After completion of the review for responsiveness, the department shall publicly open and read each price proposal associated with each responsive technical proposal. The department shall calculate the overall value rating for each proposal, which is the total price divided by the quality score. The department shall award the contract to the proposer with the lowest price per quality score point, if the proposal meets all material request-for-proposals requirements as determined by the department.

7. Procurement disputes. The request for proposals must provide for resolution of disputes that may arise before award of the contract by including a dispute review board procedure in accordance with the department's standard specifications. Except in extraordinary circumstances as determined by the department, including emergency work or situations in which delay could result in the loss of funding, the request for proposals must include a provision that requires that the procurement process be suspended pending final resolution of such disputes. In cases involving such extraordinary circumstances when suspension of the procurement process does not occur, proposers that are not selected may seek monetary damages directly related to such nonselection.

#### CREDIT(S)

2009, c. 648, § B-2.

<General Materials (GM) - References, Annotations, or Tables>

1

2

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State of Maine  
ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE  
COMMITTEE ON TRANSPORTATION

TO: Senator Lawrence Bliss, Chair  
Representative Charles R. Priest, Chair  
Joint Standing Committee on Judiciary

FROM: Dennis S. Damon, Senate Chair *[Signature]*  
Edward J. Mazurek, House Chair *[Signature]*  
Joint Standing Committee on Transportation

DATE: March 4, 2010

RE: Public Records Exception Review

The Transportation Committee has voted unanimously in favor of an amended version of LD 1639, "An Act to Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs." The amendment includes provisions that provide for confidential treatment of certain information. Pursuant to Title 1, §434, we are requesting a review by your committee of those provisions.

Attached is the amendment. Part A of the amendment allows the Department of Transportation to receive and solicit proposals and enter into contractual agreements with private entities for the building, leasing or financing of certain transportation facilities. The amendment applies to proposals and agreements to form public-private partnerships when the initial capital cost of the project is at least \$25 million, or when the proposal includes placing tolls on existing transportation facilities that were not previously subject to tolls.

Part A of the amendment (or the proposed Title 23, §4251, sub-§10) proposes that all records, notes, summaries, working papers, plans, interoffice and intraoffice memoranda, or other materials prepared, used or submitted in connection with any proposal considered under the public-private partnership provisions are confidential and not subject to public review until the department determines that a proposal meets the standards set forth in the public-private partnership statute, or until the department finally rejects the proposal. Upon the occurrence of either event, all records and other materials in connection with the proposal or agreement are no longer confidential and are subject to public review.

Part B of the amendment revises the current design-build procurement statute of the Department of Transportation and moves the statute to a new chapter within Title 23. Part B also includes confidentiality provisions; however, these provisions are in current law and simply moved to a new section of law. You will find those confidentiality provisions in the proposed Title 23, §4244, sub-§3 (prequalification) in the second paragraph; sub-§4 (request for proposals); and sub-§6 (best-value award) in the second paragraph.

If you have any questions, please don't hesitate to contact us.

COPY

L.D. 1639

Date:

(Filing No. H- )

## TRANSPORTATION

Reproduced and distributed under the direction of the Clerk of the House.

### STATE OF MAINE HOUSE OF REPRESENTATIVES 124TH LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT " " to H.P. 1167, L.D. 1639, Bill, "An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

#### PART A

Sec. A-1. 23 MRSA c. 410, sub-c. 5 is enacted to read:

#### SUBCHAPTER 5

#### PUBLIC-PRIVATE PARTNERSHIPS

#### §4251. Public-private partnerships; transportation projects

1. Definitions. As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Agreement" means a contract between the department and a private entity to create a public-private partnership that allows for private sector participation in the financing, development, operation, management, ownership, leasing or maintenance of a transportation facility and that sets forth rights and obligations of the department and the private entity in that partnership.

B. "Project" means the initial capital development of a transportation facility.

C. "Proposal" means a conditional offer of a private entity that, after review, negotiation, documentation and legislative approval, may lead to an agreement as provided in this subchapter.

1 D. "Transportation facility" means a facility that is or if developed would be within  
2 the jurisdiction of the department including a highway, bridge, railroad line, pier,  
3 airport, trail, ferry vessel, building or other improvement.

4 2. Applicability. This subchapter applies to a proposal or agreement for a private  
5 entity to form a public-private partnership when the department estimates that the initial  
6 capital cost of a project is \$25,000,000 or more or when the proposal includes placing  
7 tolls on existing transportation facilities that were not previously subject to tolls. Nothing  
8 in this section is intended to prohibit or otherwise affect programs that do not meet the  
9 criteria of this subsection.

10 3. Authorization. Notwithstanding any other provision of law, the department is  
11 authorized to receive or solicit proposals to form a public-private partnership with respect  
12 to a transportation facility. Proposals must be reviewed in accordance with this  
13 subchapter. Upon approval of the Legislature as provided in this subchapter, the  
14 department may enter into an agreement.

15 4. Standards for review. Before submitting a proposal to the Legislature for  
16 approval the department must find that the proposal meets the following standards.

17 A. The purpose of and need for the transportation facility must be consistent with the  
18 long-term planning of the department.

19 B. The private entity must have the financial, technical and operational capacity to  
20 discharge the responsibilities set forth in the proposal cost-effectively and responsibly  
21 as determined by the department. This capacity must include, but is not limited to,  
22 meeting department prequalification standards for professional engineering services  
23 and general contracting.

24 C. The proposed transportation facility must be owned, controlled, operated and  
25 maintained in a manner satisfactory to the department.

26 D. The proposal must be cost-effective in the long term.

27 E. The proposal must limit the use of state capital funding to less than 50% of the  
28 initial capital cost of the transportation facility and to the extent practicable minimize  
29 the use of transportation funding sources such as the Highway Fund, general  
30 obligation bonds supported by the Highway Fund, the TransCap Trust Fund under  
31 Title 30-A, section 6006-G and program funding provided by the Federal Highway  
32 Administration.

33 F. If the proposed transportation facility is to be supported by tolls or other user fees,  
34 the private entity must provide a traffic and revenue study prepared by an expert  
35 acceptable to the department and national bond rating agencies. The private entity  
36 must also provide a finance plan consistent with the traffic and revenue study that  
37 identifies the proposal costs, revenues by source, financing, major assumptions,  
38 internal rate of return on private investments and whether any government funds are  
39 assumed to deliver a cost-feasible project and that provides a total cash flow analysis  
40 beginning with implementation of the project and extending for the term of the  
41 agreement.

1 G. The proposal must demonstrate safeguards adequate to ensure that no significant  
2 additional costs or service disruptions would be borne by the traveling public and  
3 residents of the State if the private entity defaults or cancels the agreement.

4 H. The proposal must include provisions guaranteeing performance by the private  
5 entity and payment of subcontractors, including, but not limited to, performance and  
6 payment bonds, letters of credit, parent company guarantees and lender and equity  
7 partner guarantees.

8 I. The proposal and the transportation facility must comply with all requirements of  
9 applicable federal, state and local laws and department rules, policies and procedures.

10 J. The proposal must identify the law enforcement jurisdictions and responsibilities  
11 relative to the transportation facility.

12 K. The proposal must provide that all reasonable costs of substantially affected local  
13 governments and utilities related to the transportation facility are borne by the private  
14 entity or are otherwise provided for to the satisfaction of the department.

15 L. The proposal and transportation facility are in the best interest of the public.

16 **5. Proposal and selection processes; solicited and unsolicited.** The department  
17 may request proposals from private entities for a public-private partnership for a  
18 transportation facility or may accept unsolicited proposals pursuant to this subsection.

19 A. If the department receives an unsolicited proposal and determines that it meets the  
20 standards in this subchapter, the department shall publish a notice of the receipt of the  
21 proposal on the department's publicly accessible website or through advertisements in  
22 newspapers. If a notice is published exclusively in newspapers, the notice must  
23 appear in 2 or more public newspapers circulated wholly or in part in the State and in  
24 one public newspaper circulated wholly or in part in the county where the proposed  
25 transportation facility is to be located if any such newspaper is circulated in that  
26 county. The notice must provide that the department will accept, for 120 days after  
27 the initial date of publication, proposals meeting the standards in subsection 4 from  
28 other private entities for transportation facilities that satisfy the same basic purpose  
29 and need. A copy of the notice must be mailed to each local government in the area  
30 affected by the proposal.

31 B. After the proposal or proposals have been received, and any public notification  
32 period has expired, the department shall rank the proposals in order of preference. In  
33 ranking the proposals, the department may consider factors that include, but are not  
34 limited to, professional qualifications, general business terms, innovative engineering  
35 or cost-reduction terms, finance plans and the need for state funds to deliver the  
36 project and discharge the agreement. The department shall undertake negotiations  
37 with the private entity submitting the 1st-ranked proposal. If the department is not  
38 satisfied with the results of the negotiations, the department may, at its sole  
39 discretion, terminate negotiations with that entity and the department may negotiate  
40 with the other entities in order of the ranking of their proposals. If only one proposal  
41 is received, the department shall negotiate in good faith and, if the department is not  
42 satisfied with the results of the negotiations, the department may, at its sole  
43 discretion, terminate negotiations.

1 C. The department may require that the private entity assume responsibility for all  
2 costs incurred by the State or local governments before execution of the agreement,  
3 including costs of retaining independent experts to review, analyze and advise the  
4 department with respect to the proposal.

5 **6. Tolls; fares.** An agreement may authorize the private entity to impose tolls or  
6 fares for the use of the transportation facility. The following provisions apply to such an  
7 agreement.

8 A. The agreement must be consistent with the traffic and revenue study required  
9 under subsection 4, paragraph F.

10 B. The agreement must ensure that the transportation facility and any related toll  
11 facility are properly operated and maintained in accordance with department  
12 standards or standards generally accepted in the transportation industry.

13 C. The agreement must include provisions governing changes in tolls or fares.

14 D. The department may require provisions in the agreement that ensure that a  
15 negotiated portion of revenues from a toll-generating or a fare-generating  
16 transportation facility is returned to the department over the life of the agreement.

17 **7. Exercise of powers.** If the department exercises its power of eminent domain for  
18 the development and construction of a transportation facility pursuant to this subchapter,  
19 the department must retain ownership rights and interests taken. The State may provide  
20 maintenance, law enforcement and other services with respect to a transportation facility  
21 owned by a private entity when the agreement provides for reasonable reimbursement for  
22 such services.

23 **8. Term of agreement.** An agreement may not exceed a term of 50 years unless the  
24 Legislature, upon the recommendation of the Commissioner of Transportation, approves  
25 a longer term.

26 **9. Legislative approval.** If the department determines that a public-private  
27 partnership proposal and draft agreement meets the standards of this subchapter, the  
28 department shall submit to the Legislature a bill that authorizes the agreement. The bill  
29 must include a statement that the proposal meets the standards in subsection 4, a  
30 summary of the substance of the draft agreement and a description of the nature and  
31 amount of state investment, if any, including effects on programmed capital work.

32 **10. Confidentiality of proposals and negotiations.** All records, notes, summaries,  
33 working papers, plans, interoffice and intraoffice memoranda or other materials prepared,  
34 used or submitted in connection with any proposal considered under this subchapter are  
35 confidential and not subject to public review until the department determines that the  
36 proposal meets the standards of this subchapter or until the proposal is finally rejected by  
37 the department.

38 **11. Report of proposals.** By February 1st, annually, the department shall provide to  
39 the joint standing committee of the Legislature having jurisdiction over transportation  
40 matters a report summarizing all proposals that the department has determined meet the  
41 standards of this subchapter or that have been finally rejected during the previous  
42 calendar year.

1 12. Rules. The department may adopt rules to implement this subchapter. Rules  
2 adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
3 chapter 375, subchapter 2-A.

4 **PART B**

5 **Sec. B-1. 23 MRSA §753-A,** as amended by PL 2007, c. 306, §3, is repealed.

6 **Sec. B-2. 23 MRSA §4244** is enacted to read:

7 **§4244. Design-build contracting**

8 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
9 following terms have the following meanings.

10 A. "Best value" means the highest overall value to the State, considering quality and  
11 cost.

12 B. "Design-build contracting" means a method of project delivery whereby a single  
13 firm is contractually responsible for performing design, construction and related  
14 services.

15 C. "Major participant" means a firm that would have a major role in the design or  
16 construction of a project as specified by the department in its procurement  
17 documents.

18 D. "Project" means the highway, bridge, railroad, pier, airport, trail, ferry vessel,  
19 building or other improvement being constructed or rehabilitated, including all  
20 professional services, labor, equipment, materials, tools, supplies, warranties and  
21 incidentals needed for a complete and functioning product.

22 E. "Proposal" means an offer by the proposer to design and construct the project in  
23 accordance with all request-for-proposals provisions.

24 F. "Proposer" means an individual, firm, corporation, limited liability company,  
25 partnership, joint venture, sole proprietorship or other entity that submits a proposal.

26 G. "Public notice" means notice given electronically through the department's  
27 publicly accessible website or through advertisements in newspapers. If notice is to  
28 be given exclusively in newspapers, the notice must appear in 2 or more public  
29 newspapers circulated wholly or in part in the State and in one public newspaper  
30 circulated wholly or in part in the county where the proposed project is located if any  
31 such newspaper is circulated in that county.

32 H. "Quality" means those features that the department determines are most important  
33 to the project. Quality criteria include design, constructability, long-term  
34 maintenance costs, aesthetics, local impacts, traveler and other user costs, service life,  
35 time to construct and other factors that the department considers to be in the best  
36 interest of the State.

37 **2. Authorization.** Notwithstanding section 4243 or any other provision of law, the  
38 department may use design-build contracting to deliver projects. The department may  
39 evaluate and select proposals on either a best-value or low-bid basis. If the scope of work

1 requires substantial engineering judgment, the quality of which may vary significantly, as  
 2 determined by the department, then the basis of award must be the best value.

3 The department retains the authority to terminate the contracting process at any time, to  
 4 reject any proposal, to waive technicalities or to solicit new proposals if the department  
 5 determines that doing so is in the best interest of the State.

6 **3. Prequalification.** A proposer must be prequalified to be eligible to submit a  
 7 proposal. A proposer must be prequalified by a project-specific request-for-qualifications  
 8 process described in this subsection, or a proposer may be a team formed of contractors  
 9 and designers that are each prequalified separately for design-build contracting in  
 10 accordance with ongoing prequalification procedures established by the department. The  
 11 department shall specify the method of prequalification in its discretion, except that if the  
 12 basis of award is the best value, then prequalification must be through a project-specific  
 13 request-for-qualifications process.

14 The department shall give public notice of a project-specific request-for-qualifications  
 15 process. The department shall issue a request-for-qualifications package to all firms  
 16 requesting one in accordance with the notice. Interested firms shall supply, for  
 17 themselves and all major participants, all information required by the department. The  
 18 department may investigate and verify all information received. All financial  
 19 information, trade secrets or other information customarily regarded as confidential  
 20 business information submitted to the department is confidential. The department shall  
 21 evaluate and rate all firms submitting a conforming statement of qualifications and select  
 22 the most qualified firms to receive a request for proposals. The department may select  
 23 any number of firms, except that, if the department fails to prequalify at least 2 firms, the  
 24 department shall repeat the request-for-qualifications process or select a different project  
 25 delivery method.

26 **4. Request for proposals.** If prequalification is through project-specific  
 27 prequalification, the department shall issue a request for proposals to those firms  
 28 prequalified. If prequalification is through ongoing prequalification procedures  
 29 established by the department, the department shall give public notice of the request for  
 30 proposals. The request for proposals must set forth the scope of work, design parameters,  
 31 construction requirements, time constraints and all other requirements that have a  
 32 substantial impact on the cost or quality of the project and the project development  
 33 process, as determined by the department. The request for proposals must include the  
 34 criteria for acceptable proposals and must include a request-for-information process that  
 35 allows for clarification of such criteria. For projects to be awarded on a best-value basis,  
 36 the scoring process and quality criteria must also be contained in the request for  
 37 proposals. The request for proposals may also provide for a process for the department to  
 38 meet with each proposer individually to review conceptual technical elements of each  
 39 proposal before full proposal submittal for the purposes of identifying design or other  
 40 technical elements that are unacceptable to the department or that obviously would cause  
 41 rejection of the proposal as nonresponsive. All such conceptual technical meetings,  
 42 including submittals and responses, are confidential until award of the contract, but the  
 43 department may issue addenda to all proposers to clarify design or other technical  
 44 elements that will or will not be allowed. Upon award of the contract and after resolution  
 45 of any procurement disputes, the department shall return documents submitted by  
 46 unsuccessful proposers upon request. The request for proposals may also provide for a

1 stipend upon specified terms to unsuccessful proposers that submit proposals conforming  
2 to all material request-for-proposals requirements as determined by the department.

3 5. Low-bid award. If the basis of the award is lowest cost, then each proposal must  
4 be submitted by the proposer to the department in 2 separate components, a sealed  
5 technical proposal and a sealed price proposal. These 2 components must be submitted  
6 simultaneously. The department shall first review technical proposals for responsiveness.  
7 The department shall award the contract to the proposer that submits a responsive  
8 proposal with the lowest price, if the proposal meets all material request-for-proposals  
9 requirements as determined by the department.

10 6. Best-value award. If the basis of the award is best value, then each proposal  
11 must be submitted by the proposer to the department in 2 separate components, a sealed  
12 technical proposal and a sealed price proposal. These 2 components must be submitted  
13 simultaneously.

14 The department shall open first each technical proposal and evaluate and score it based on  
15 the quality criteria contained in the request for proposals. The request for proposals may  
16 provide that the range between the highest and lowest quality score of responsive  
17 technical proposals must be limited to an amount certain. During this evaluation process,  
18 the price proposals must remain sealed and all technical proposals are confidential.

19 After completion of the review for responsiveness, the department shall publicly open  
20 and read each price proposal associated with each responsive technical proposal. The  
21 department shall calculate the overall value rating for each proposal, which is the total  
22 price divided by the quality score. The department shall award the contract to the  
23 proposer with the lowest price per quality score point, if the proposal meets all material  
24 request-for-proposals requirements as determined by the department.

25 7. Procurement disputes. The request for proposals must provide for resolution of  
26 disputes that may arise before award of the contract by including a dispute review board  
27 procedure in accordance with the department's standard specifications. Except in  
28 extraordinary circumstances as determined by the department, including emergency work  
29 or situations in which delay could result in the loss of funding, the request for proposals  
30 must include a provision that requires that the procurement process be suspended pending  
31 final resolution of such disputes. In cases involving such extraordinary circumstances  
32 when suspension of the procurement process does not occur, proposers that are not  
33 selected may seek monetary damages directly related to such nonselection.

## 34 SUMMARY

35 This amendment replaces the bill.

36 The purpose of Part A of this amendment is to stimulate the Maine economy by  
37 allowing the Department of Transportation to receive and solicit proposals and, with  
38 legislative approval, enter into agreements with private entities for the building,  
39 ownership, leasing or financing of certain transportation facilities.

40 Part B makes changes to the design-build procurement statutes for the Department of  
41 Transportation.

FISCAL NOTE REQUIRED  
(See Attached)

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# COMMITTEE AMENDMENT



Approved: 03/05/10 *mac*

# 124th MAINE LEGISLATURE

LD 1639

LR 2033(02)

## An Act To Stimulate the Maine Economy and Promote the Development of Maine's Priority Transportation Infrastructure Needs

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Transportation

Fiscal Note Required: Yes

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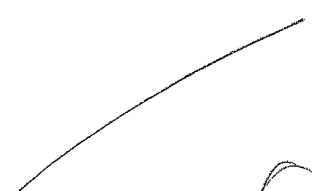
### Fiscal Note

Potential current biennium cost increase - Highway Fund

Potential current biennium cost increase - Federal Expenditures Funds

#### Fiscal Detail and Notes

This legislation allows the Department of Transportation, with Legislative approval, to enter into agreements with private entities for the building, ownership, leasing or financing of certain transportation facilities. Until potential proposals from private entities are received, it is not possible to determine whether or not there would be a cost to the State.



RECEIVED

SEP 22 2010

Statute: 23 MRSA 4251

Agency: MaineDOT

Contact Person: Toni Kemmerle

Contact Person's E-Mail Address: Toni.kemmerle@maine.gov

**1. Agency's experience in administering or applying this public records exception.**

Legislation containing this exception became effective on July 12, 2010. To date, MaineDOT has had no experience administering or applying this public records exception.

**2. Does your agency support or oppose the exception?**

MaineDOT supports this exception because we believe that a law guaranteeing the confidentiality of the concept and details of such proposals will encourage the development and submission of innovative, well conceived proposals by providing a means to protect the necessary investment in time, resources and talent by the submitter(s) from unjust appropriation by others.

**3. Identify any problems that have occurred in application of this exception. Is the exception clear?**

No problems in application have occurred. We believe the exception is articulated clearly.

**4. Does agency recommend changes to this exception?**

No.

**5. Identify stakeholders whose input should be considered in the evaluation of this exception?**

We are unaware of any stakeholders whose input should be considered.

**6. Please provide any further relevant information.**

No further information is available.

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